

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
vs.)	
)	
Northern Illinois Gas Company)	Docket No. 12-0601
d/b/a Nicor Gas Company)	
)	
Reconciliation of revenues collected)	
under Rider 30 with the actual)	
costs associated with energy efficiency)	
and on-bill financing programs.)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S REPLY BRIEF
PUBLIC VERSION

BEGIN* CONF XXX ***END CONF** - Denotes Confidential Information

NOW COMES the Staff of the Illinois Commerce Commission, by and through its undersigned counsel, pursuant to Rules 200.800, submits, its Reply Brief in the above-captioned matter, as follows:

As an initial matter, Staff notes that the arguments raised in its Initial Brief address many, if not most, of the matters raise by Nicor in its Initial Brief (IB). Staff will not re-allege those arguments in detail.

However, Staff urges the ALJ and Commission, in analyzing Nicor's arguments as raised in the Company's IB, to consider statutory first principles. Namely, Section 8-104 provides that: "[i]t serves the public interest to allow natural gas utilities to recover costs for reasonably and prudently incurred expenses for cost- effective energy efficiency measures." 220 ILCS 5/8-104(a). The Commission recognized that basic prudence principles attach to this proceeding when it stated in the Initiating Order that "Nicor's Rider 30, Energy Efficiency Plan Cost Recovery, allows the company to recover

from certain groups of customers prudently incurred costs, fees, and charges related to energy efficiency measures carried out by the company and approved by the Commission, as provided for in section 8—104 of the Public Utilities Act ...[.]” Initiating Order, 1.

The Commission has adopted the following definition of decisional prudence:

Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.

Illinois Power Co. v. Commerce Comm’n, 245 Ill.App.3d 367, 371; 612 N.E.2d 925, 929 (3rd Dist. 1993)

In its IB, Nicor makes a number of assertions regarding the rather vague benefits it ascribes to the Second Star Club (“SSC”). It claims to have adduced “substantial” evidence to be networking, the promotion of EEP measures to so-called “trade allies”, the “building of new relationships”, and to “develop trust and instill confidence” among various parties. IB at 14-15.

Nicor is required to rely on these airy pronouncements for the excellent reason that it cannot conclusively demonstrate that the SSC generated a single therm of energy savings. It attempts, on a “correlation equals causation” theory, to assert that, since major industrial customers were in many cases invited to the SSC, and had energy savings, those savings must be ascribed to their participation in the SSC. IB at 16. However, Nicor demonstrated no causal connection between SSC participation and

therm savings, by these or any other customers. Staff Ex. 2.0 (Rev.), 7. This alone should be fatal to its claim.

Moreover, these facts should be set against the backdrop of what the SSC actually is: a luxury skybox at a sports arena, used by a select and fortunate group of people, very few of whom were customers. Staff Ex. 1.0, 6-7. As the Staff demonstrated in its own Initial Brief, see Staff IB at 7, the Commission has in the past disallowed recovery of the cost of tickets to sporting events. See, e.g., Order at 110-111, Commonwealth Edison Co.: Proposed General Increase in Electric Rates, ICC Docket No. 10-0467, 2011 WL 2521858 (Ill.C.C.) (May 24, 2011) (recovery expenses incurred by utility in purchasing luxury skyboxes to sporting events disallowed by Commission, despite utility contention that such expenses were “reasonable business expenses for employee recognition, team building, and development of business relationships with key customers”); Order, Section IV(b)(7), Northern Illinois Gas Co.: Proposed General Increase in Rates for Gas Service, ICC Docket No. 95-0219, 1996 WL 34370337 (Ill.C.C.) (June 20, 1996) (recovery of costs for tickets to sporting events used for company-described purpose of “fostering business relationships and maintaining employee morale” disallowed).

These two decisions are worthy of particular scrutiny because there, as here, the companies attempted to justify their skybox and sports ticket expenditures based on what can charitably be described as vague, intangible, benefits, such as “team building”, “development of business relationships”, or “fostering business relationships”. The Commission rightly found that these expenditures on luxury sporting junkets benefitted

ratepayers not at all. As Nicor has offered similar and indeed in some aspects almost identical justifications for the SSC, its efforts too must fail.

Further, and significantly, each of the cited decisions was decided prior to the Commission's approval of Rider 30, which is the subject of this reconciliation. See Initiating Order, 1 (Rider 30 approved May 24, 2011). This is significant, because it means the Company knew, or reasonably should have known at the time that the Commission viewed utility recovery of luxury skybox expenses with considerable disfavor. This is important because it indicates that the Company's decision to spend ratepayer money on skybox tickets cannot be adjudged prudent based on the information available to the Company at the time.

[illegible]

WHEREFORE Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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